

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No.: 5-07-CV-00174-H(2)**

LILIANA MARTINEZ-HERNANDEZ, et al.,

Plaintiffs,

v.

BUTTERBALL, LLC,

Defendant.

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT ON TWO
ISSUES:
DONNING AND DOFFING
PERSONAL PROTECTIVE
EQUIPMENT IS INTEGRAL AND
INDISPENSIBLE TO WORKERS
PRIMARY JOB DUTIES
AND
BUTTERBALL'S DEMINIMIS
DEFENSE PRE-JANUARY 2006
FAILS**

Plaintiffs file this motion pursuant to Rule 56(d), Fed.R.Civ.P., for entry of partial summary judgment as to the following issues in this case:

1. That donning and doffing of personal protective equipment is integral and indispensable to production workers' job duties under the Fair Labor Standards Act continuous workday rule, and;
2. That Butterball's *de minimis* defense, Butterball's Eighteenth Defense, does not apply to claims preceding January 2006.

The grounds for this Motion are set forth in the Memorandum of Law that plaintiffs have filed in support of this Motion.

In support of this motion, the undisputed facts show that:

1. Donning and doffing of personal protective equipment is compensable under the Fair Labor Standards Act because it is integral and indispensable to production workers' primary duties; and
2. Even taking Butterball's expert's methodology and calculation of the time it took Butterball's production workers to don, doff, and sanitize required personal protective

equipment and walk to various points on Butterball's premises, as correct for purposes of this motion, that Butterball's production workers performed substantial uncompensated work that is not subject to being treated as *de minimis*.

WHEREFORE, Plaintiffs request that the Court grant Plaintiff's motion for partial summary judgment.

This the 19th day of November 2010.

/s/ Robert J. Willis

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CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2010 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: L. Dale Owens, Eric Magnus, Eric Magnus, Todd Van Dyke, Stephen X. Munger, Melissa R. Davis, and Joel T. Alexander.

Dated: November 19, 2010.

Respectfully submitted,

/s/ Robert J. Willis

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